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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 316

JOSEPH MITCHELL, APPELLANT,

vs.

CONSERVATIVE HOMESTEAD ASSOCIATION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 31, 1935.

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IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

Division "B"—Docket 5

Transferred to Division "D"

No. 199,578

JOSEPH MITCHELL

versus

CONSERVATIVE HOMESTEAD ASSOCIATION

PETITION FOR INJUNCTION—Filed October 25, 1932

To the Honorable the Civil District Court for the Parish of Orleans, State of Louisiana:

The petition of Joseph Mitchell, of lawful age and a resident of this City, with respect, represents:

I

That the Conservative Homestead Association is a corporation organized under the laws of the State of Louisiana, providing for governing the creation of homestead and building, and loan associations, and particularly under the general enabling and regulatory provisions of Act 120 of 1902, and laws amendatory thereof; that said Association is domiciled and doing business in the City of New Orleans.

[fol. 2]

II

That petitioner is the owner of 100 shares of the full-paid stock of the Conservative Homestead Association of the face value of One Hundred ($100.00) Dollars each, represented by certificate No. 21353, which certificate was issued and delivered to your petitioner prior to its application to withdraw funds hereinafter referred to; that the par or face value of said certificate is the sum of Ten Thousaid ($10,000.00) Dollars.

III

That said shares of stock are withdrawable shares, and were acquired by your petitioner subject to all of the rights provided by the charter and by-laws of said Homestead Association and of the statutes under which said Association was created and by which it was governed, and particularly by the applicable provisions of Act 120 of 1902, as amended by Act 280 of 1916.

IV

Your petitioner further represents that at the time of its investment in said Homestead Association and of the acquisition of its shares of full paid stock, as heretofore alleged, the reciprocal rights and liabilities between full paid shareholders and other shareholders, and between full paid shareholders and said Association, were regulated and controlled by the charter and by-laws of said Association and the statute law, especially Acts 120 of 1902 and 280 of 1916, then in force; that said provisions became, by force of law, and implied condition and provision in petitioner's contractual relationship with said Homestead Association as a consequence of petitioner's investment by the acquisition of said shares, as completely and full as though written in detail in the certificates of shares themselves.

V

Your petitioner further represents that at the time of its investment, and acquisition of the full paid stock of said Association, as heretofore alleged, among the rights accorded to full paid shareholders by the charter and statutory provisions was that of withdrawing from said Association the investment made therein, at will, upon complying with the formal requisite of filing with said Association a written notice of intention to withdraw, whereupon there enured to the applicant for withdrawal certain statutory rights which became mandatory obligations upon the part of said Association; all of which said rights and obligations are [fol. 3] embodied and contained in the provisions of Section 7 of Act 280 of 1916, and which said rights and obligations petitioner avers are precisely as set forth in said Section and Act, and which are as follows, to-wit:

Section 7. "Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by

giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

VI

Your petitioner avers that on the 30th day of May, 1931, your petitioner applied to the defendant Homestead, under the terms of Section 7 of Act 280 of 1916, and in writing, to withdraw the amount of money thus invested in said Homestead, and represented by certificate No. 21353, to-wit, the sum of Ten Thousand ($10,000.00) Dollars, and your petitioner annexes hereto and makes part hereof, as if set out in full herein, a copy of its said written notification of desire to withdraw said funds, marking same for identification Plaintiff—1.

VII

That under the said provisions of said Section 7 of Act 280 of 1916, with the elapse of sixty (60) days from the date of petitioner's notice of intention to withdraw its in- [fol. 4] vestments from said Association, and its said application being then unsatisfied, either in whole or in part, the rights imparted to petitioner and the obligations imposed upon said Association, with respect to petitioner's withdrawal application, by the provisions of said Section and Act, became fixed and vested; that thenceforth it be-

came the mandatory duty and obligation of said Association its officers and directors, to set aside one-half of the receipts of said Association and to apply said funds solely to the discharge and liquidation, in the order filed, of petitioner's application and similar applications for withdrawal; that the validity of this procedure was affirmed, and the term "receipts" interpreted to mean net receipts, and homestead associations held subject to mandatory process to enforce this procedure, by the Louisiana Supreme Court in the case of Orlando versus Reliance Homestead Association.

VIII

That petitioner believes and, so believing, avers that after the date of its notification of intention to withdraw from said Association, many similar applications for withdrawal by other members in said Association were so paid and discharged in full, but to the date of the filing of this petition your petitioner has received nothing on account thereof.

IX

Your petitioner further avers that, either by reason of a default sixty (60) days after the application for withdrawal, in whole or in part, on the part of some other investor, or because of the default in whole after sixty (60) days from notice of intention to withdraw by petitioner itself, the said defendant Homestead Association became obligated under the terms of said statute to apportion fifty (50%) per cent of its net receipts regularly to the payment of said applications for withdrawal, in their proper sequence, and that said Homestead Association has observed said procedure under said Act 280 of 1916 regularly, although never reaching payment of the withdrawal application of your petitioner, and has continued to follow said procedure up to the effective date of Act 140 of 1932, hereinafter more particularly referred to, and purporting to change procedure.

X

That after your petitioner, by his application to withdraw under Section 7 of Act 280 of 1916, had established itself in its proper rank and place, according to the date

of its application, on the list of the defendant Homestead's shareowners applying for withdrawal of their money, and [fol. 5] had waited in vain from the time of its application for withdrawal until the meeting of the 1932 General Assembly of Louisiana for payment of the Ten Thousand ($10,000.00) Dollars, represented by its certificate, it came to the attention of petitioner that proponents of a new and different system of withdrawing funds invested in Homestead shares were endeavoring to have the said 1932 Legislature pass a new homestead law which would seriously alter the status of petitioner to its disadvantage, and would destroy its legal rights, acquired under Section 7 of Act 280 of 1916, to be paid the proceeds of its shares in the defendant Homestead, in the rank and manner provided by said Section 7, as well as disrupting and wiping out the mandatory requirements of apportionment of fifty (50%) per cent of the net revenues of said Homestead to such payments; and, in every other particular hereinafter detailed, depriving petitioner of legal rights acquired by it under the laws applicable to its investment; that petitioner did not acquiesce in said plan to change the law applicable to its investment, but that the said Legislature of 1932 nevertheless enacted what is known as the General Homestead Law of 1932, being Act 140 of that year.

XI

That, generally, said Act of 140 of 1932 supersedes Act 280 of 1916, and purports to permit new innovations and experimentations radically differing from the statutory provisions of said latter acts, and which are inconsistent with, and utterly destructive of, the fundamental and established principles inherent in the nature of building and loan institutions; that it destroys and materially changes substantive rights, and impairs or abolishes obligations theretofore created, and subsisting, in favor of withdrawing shareholders of said institutions; and purports to do these things retrospectively and in a manner applicable and prejudicial to the statutory rights accorded by the mandatory provisions of former laws, and particularly by Act 280 of 1916; all of which is done or attempted without legal or constitutional justification and in a manner that is unreasonable and arbitrary.

XII

That, more specifically, petitioner herewith enumerates and details the parts of said Act 140 of 1932 wherein said changes and innovations are attempted and of the manner and respects wherein they are prejudicial to petitioner and violative of its constitutional rights:

[fol. 6] (a) That Section 56 of said Act purports to supersede and abolish the requirements made mandatory on the part of said Association by former laws, to set aside and allocate one-half of the net receipts towards the liquidation of petitioner's withdrawal application, and to substitute therefor, and in lieu thereof, the discretion of the Board of Directors; that said section permits of the making of new loans, and of the payment of dividends, from the proportion of net receipts theretofore reserved to applicants for withdrawal under the provisions of Act 120 of 1902 and Act 280 of 1916.

(b) That Section 57 of said Act, in permitting of the sale of repossessed property of said Association, in exchange for shares of unpledged stock, inaugurates an innovation that is experimental and destructive of the principle of mutuality upon which such institutions are founded, and upon the basis of which they have always existed in Louisiana; that such a provision permits of a preference in the retirement of stock of shareholders not on the withdrawal list, and of the disposition of a valuable asset of said Association in such a manner as can in no way enure to the benefit of withdrawing shareholders—contrary to the provisions of Act 280 of 1916, and highly prejudicial to the rights and obligations thereby accorded to petitioner as a withdrawing shareholder.

(c) That Section 53 of said Act permits said associations to infringe upon the one-half of net receipts formerly required to be allocated to withdrawing shareholders, as heretofore alleged, by allowing for the creation of cash reserves to pay dividends to continuing members.

(d) That Section 54 of said Act creates a new experimentation in the manner and method of payment of withdrawals, reduces the amount payable, upon maturity of the application, from one hundred (100%) per cent to twenty-five (25%) per cent; provides a stagger system of pay-

ment, and abolishes the system of payment in full in order filed; creates a discriminatory provision for payment in full in the order filed; creates a discriminatory provision for the payment in full of shareholders owning Five Hundred ($500.00) Dollars or less; accords to the directors an optional discretion to further discriminate in the payment of applications of One Hundred ($100.00) Dollars or less; and completely destroys the absolute mutuality heretofore existing between installment shareholders and full paid shareholders, by according to the former a preference; all of which is done and permitted retrospectively, and by said Act made obligatory upon said Association.

[fol. 7] (e) That Section 55 of said Act attempts to deprive withdrawing shareholders of free access to the courts to enforce their rights and protect their investments; denies to them a cause of action except under the provisions of Act 140 of 1932, and abolishes the right of access to the books and records of such associations for any other purpose.

All of which said innovations, experimentations and changes are material and substantive, and highly prejudicial to the vested contract rights heretofore accorded to petitioner by law, and especially by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

XIII

That, therefore, Sections 53, 54, 55, 56 and 57 of Act 140 of 1932 deprive your petitioner of "equal protection" and of "due process of law"; that they are arbitrary and unreasonable in their application to petitioner, divest petitioner of vested rights, and "impair" the obligation of petitioner's contract with said Association, as heretofore alleged; that said sections are therefore violative of Amendment 5 and Section 1 of Amendment 14, and Section 10 of Article I of the Constitution of the United States, and Section 15 of Article IV of the Constitution of the State of Louisiana of 1921, and are therefore null and void insofar as they are sought to be made retrospective in their applicability to petitioner or its withdrawal application in said Association.

XIV

That the framers of said Act 140 of 1932, doubtless having in mind the confiscatory character, injustice, illegality and unconstitutionality of the before complained of provisions of said Statute, in its attempted retroactive operation upon the withdrawing shareholders whose rank had become established under the previous law, have provided by Section 76 of said Act 140 of 1932 a plan of validation of said Statute by acquiescence, in that the said Section 76 permits of a period of ninety (90) days from the effective date of the Statute within which the shareholders may, by their silence and inaction, acquiesce in these new provisions of law affecting them, much in the same manner as new shareholders coming into the Association would tacitly accept provisions of the then existing laws; but that your petitioner, who has diligently and vigorously opposed this attempted destruction of its rights now declared upon, declines acquiescence in the changed provisions of the Act of 1932, as affecting it, and does now, within the ninety (90) day period, repudiate and protest against the application of said changed provisions [fol. 8] of law retroactively upon itself, and does call upon this Honorable Court to take notice of its refusal to acquiesce and to, therefore, protect it in the maintenance of its rank and rights as a withdrawing shareholder from the defendant Homestead under Section 7 of Act 280 of 1916; that said Act 140 of 1932 became effective on July 27th, 1932.

XV

That petitioner has no adequate remedy at law than by the process of injunction to restrain and prohibit said Association from applying and following the unconstitutional permissive and obligatory provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in the manner and respects hereinbefore complained of and enumerated in detail under Article XII of this petition, insofar as they may disturb the status and affect the statutory and contract rights of petitioner and the investment which petitioner has made in said Association; that unless said Association is enjoined from following the course of conduct either permitted or made obligatory by said Sections of Act 140 of

1932 to the extent that they destroy and adversely impair the vested rights which petitioner has acquired as a withdrawing shareholder, petitioner will suffer irreparable injury.

Wherefore, petitioner prays that a rule "nisi" issue herein, ordering the Conservative Homestead Association, through its proper officers, to show cause, on a day and hour to be fixed by this Honorable Court, why a preliminary injunction should not issue herein, restraining and forbidding the Conservative Homestead Association, its officers, agents and employees, from following the course of conduct made permissive or obligatory by the provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in such a manner as to disturb the status of petitioner's withdrawal application of its investment in said Association, or in such a manner as to change, alter or impair the rights accorded to petitioner as a withdrawing shareholder by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

Petitioner further prays that the Conservative Homestead Association, through its proper officers, be duly cited to appear and answer this petition and, after legal delays and due proceedings had, there be judgment herein in favor of petitioner, Joseph Mitchell, and against Conservative Homestead Association, said judgment decreeing that Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, insofar only [fol. 9] as they may or do affect petitioner or petitioner's investment and the rights acquired by petitioner as a withdrawing shareholder under the provisions of Act 120 of 1902, as amended by Act 280 of 1916, are unconstitutional, null and void; said judgment further decreeing that petitioner is entitled to enforce the provisions of Section 7 of Act 280 of 1916, and to have and enforce all and every right accorded to petitioner, by said Section and Act, or by any other provision of Act 120 of 1902, as amended by Act 280 of 1916; said judgment further perpetuating the temporary injunction herein sued out, until petitioner has received in full his investment of Ten Thousand ($10,000.00) Dollars, represented by certificate No. 21353 in said Homestead Association. Petitioner further prays for all orders deemed necessary or proper, for all costs of this proceeding, and for such further and general relief as petitioner

might be entitled to by law, equity and the nature of the case.

(Signed) Arthur B. Leopold, Attorney for Petitioner.

Duly sworn to by Arthur B. Leopold. Jurat omitted in printing.

ORDER

Let a rule "nisi" issue herein, and let the defendant, Conservative Homestead Association, through its proper officers, —— October, 1932, at the hour of 10:30 o'clock A. M., why a preliminary injunction should not issue in this cause, as prayed for and according to law.

[fol. 10] New Orleans, La., October 25, 1932.

(Signed) M. M. Boatner, Judge.

[fol. 11] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

[Title omitted]

ANSWER—Filed January 4, 1933

Into Court comes the Conservative Homestead Association, defendant herein, and, for answer to the petition of Joseph Mitchell, says:

I

Respondent denies the averments of Paragraph I, except as hereinafter admitted.

Respondent is a building and loan association, organized and operated under the laws of the State of Louisiana, particularly Act 140 of the Legislature of 1932, and is domiciled and doing business in the City of New Orleans.

II

Respondent admits the allegations of Paragraph II.

III

Answering Paragraph III, respondent admits that said shares are withdrawable shares.

Respondent shows that the other averments of Paragraph III are conclusions of law, which respondent is not required to answer. In the alternative, if any facts are involved in said paragraph said facts are denied.

IV

Answering Paragraph IV, respondent shows that the averments of the said paragraph constitute conclusions of law, which respondent is not required to answer; and, if any facts are involved in said paragraph, then respondent denies said facts.

V

Answering Paragraph V, respondent admits that the shares of petitioner are withdrawable shares; and respondent shows that the other averments of the said paragraph are conclusions of law, which respondent is not required to answer. If any are embodied in said paragraph, the said facts are denied.

[fol. 12]

VI

Respondent admits the averments of Paragraph VI.

VII

Answering Paragraph VII, respondent shows that said paragraph contains mere conclusions of law, which respondent is not required to answer; and if any averments of fact are contained in said paragraph, the said averments are denied.

VIII

Respondent admits the averments of Paragraph VIII, but shows that all such applications for withdrawal by other members in said Association had been applied for and made previous to the application of the withdrawal of the petitioner herein, and were paid by respondent association, when reached on the withdrawal list, in strict accordance with law; and respondent further shows that numerous applications for withdrawal antedating petitioner's application herein sued on were never reached on respondent's list, and remain unpaid.

IX

Respondent denies the averments of Paragraph IX, except as hereinafter admitted, and respondent shows that it has always, and is now, complying with the law.

X

Answering Paragraph X, respondent denies the averments of fact and conclusions of law stated in said paragraph, except as hereinafter admitted.

Respondent admits the enactment of Act 140 of 1932 by the Legislature of Louisiana of that year, and the appearance of petitioner, through counsel, to voice opposition to said legislation at the time of the enactment thereof.

XI

Answering Paragraph XI, respondent shows that the said paragraph contains only conclusions of law, which respondent is not required to answer. If any statements of fact are contained in said paragraph, the same are denied.

XII

Paragraph XII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

[fol. 13]

XIII

Paragraph XIII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

XIV

Respondent admits that Act 140 of 1932 of the Legislature of Louisiana became effective on July 27, 1932.

Respondent denies the other averments of law and of fact contained in Paragraph XIV of plaintiff's petition.

XV

Paragraph XV contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

Further answering, respondent shows that building and loan associations in Louisiana are quasi-public institutions,

organized and doing business not for profit, but to enable wage-earners to own their homes. Said Associations, not only in Louisiana, but in practically every other State, as also in England, have always been recognized as being subject to public supervision, regulation and control. In Louisiana, the status of these associations is, and has for many years been, reflected in numerous provisions of the legislative statutes and in many decisions of the courts. In bar of the claims of the petitioner herein, respondent pleads the provisions of Act No. 140 of 1932 of the Legislature of Louisiana, and particularly the provisions of Section 80 of said Act.

In Louisiana, at the close of the year 1930 (last available date), there were one hundred two (102) building and loan associations, with a membership of 200,930 and assets totalling $182,358,292.00. In the United States, including Hawaii, the total number of building and loan associations was 11,777, with a total membership of 12,350,928 and total assets of $8,828,611,925.00, an increase over the previous year in assets of $128,964,939.00 and in membership of 225,545. The building and loan associations in Louisiana, at the close of 1930, owned mortgage loans totalling $161,525,736.00, invested in homes and representing, with savings banks, the greatest factor for the promotion of thrift and good citizenship in the State. The outstanding mortgage loans in building and loan associations in the United States, for the year 1930, represented a total of $7,764,034,674.00. The total number of depositors — savings banks in the United States for the year 1930 was 11,895,075, and the total assets of said banks at the end of that year, [fol. 14] amounted to $9,190,969,000.00. In building and loan associations in the United States for that year, there were 12,350,928 members, and the total assets of the said building and loan associations in that year were $8,828,611,925.00.

Your respondent shows that, on or about July 27, 1932, it had 6,742 members, with total outstanding mortgage loans of $4,720,200.00, and total assets of $6,513,684.81, and a waiting list of 1,078 applicants, representing $711,632.71, upon which withdrawal list respondent had not been able to make any payments since the 22nd day of April, 1931, and that respondent has not been able since that time to make any payments upon its said withdrawal list.

Since the date of the organization of the first building and loan association in Louisiana, under normal conditions of business, the said associations have been able to meet applications for withdrawals practically on demand. In 1929 it became impossible under the conditions of depression in the business world then prevailing, for many building and loan associations to meet on demand applications for withdrawal, and withdrawal lists were instituted in numerous building and loan associations in this State, and elsewhere. Act 140 of 1932 was enacted by the Legislature of Louisiana to provide a method of withdrawal which would equitably take care of the applications of members in such associations, and, at the same time, protect and safeguard the interests of the public in said associations.

Under normal business conditions, building and loan associations in this State, and elsewhere, were operated without difficulty under a withdrawal plan by which shareholders desiring to withdraw were paid off in sequence and without regard to the individual needs of the applicants or the amounts of their applications for withdrawal. Under normal conditions, these associations received daily substantial deposits and collections, making it easy for them to meet on demand the applications of their withdrawing shareholders.

But these conditions were fundamentally altered by the present depression. As there was great unemployment and a tremendous need for cash for living expenses in millions of households in this country, there was a great decrease in the amount of funds available for investment in building and loan associations. In this State, about twelve months ago, conditions reached the point where, [fol. 15] owing to the great public distress and poverty, no one had money which could be invested in building and loan associations, and all receipts from the investing public or wage-earners ceased absolutely. This same condition made it necessary for those who were already shareholders in such associations to apply for the withdrawal of their investments. At the same time, the normal collections from borrowers came almost to a standstill, as, owing to the unemployment, many of the members found it impossible to keep up the payments on their homes. The associations were compelled to repossess many of said homes, which, because of the lessened buying power of the public, and the lack of money and credit generally, could only be re-

sold at a loss. When the associations retained their repossessed properties, they became subject to heavy and burdensome expenses for taxes, paving and repairs in respect of said properties.

The absence of funds from investors, the necessity of repaying bank loans out of current receipts, the extraordinary expenses incident to the administration of large blocks of repossessed properties, made it necessary for the association to postpone and delay the payment of withdrawal applications, almost indefinitely.

In every association, the shareholders nevertheless continued to present applications for withdrawals; and it became evident, if the associations were to continue under the plan then existing for the payment of withdrawals, that, for a long period of time, only a few shareholders could expect to receive in cash the repayment and return of the monies invested by them in said associations; this being especially true because, in many cases, at or near the top of the withdrawal lists, were many large investors whose applications for withdrawal would have to be paid first, before any payments whatever could be made to other shareholders not so favorably placed on the withdrawal list.

There were also many shareholders who were particularly in great need of the cash repayment of their small savings; and, because of the clogged conditions of the withdrawal lists, it was likely, in many instances, that these small investors would have to wait many months, and in several cases many years, before receiving the return of their investments.

The new statute (Act No. 140 of 1932), through the medium of a new and improved plan for the payment of withdrawals, meets the varying conditions above set forth, by a reasonable and proper and legal exercise of the police power. This new plan does not displace any application for withdrawal, but, for the general good, and in the interest of [fol. 16] the public welfare, without partiality or inequality, provides for the distribution, on a more equitable basis, of any funds available for the payment of withdrawal in any building and loan association.

The said statute was recommended to the Legislature by the State Banking Commissioner and Supervisor of Building and Loan Associations in this State. The State Banking Department for thirty years, as required by law, has

been recommending basic changes in the organization, operation and management of building and loan associations. Many of these recommendations have been adopted by the Legislature, and enacted into law. All of said recommendations and new legislative provisions have been complied with by the building and loan associations of this State. Indeed, until the filing of the present suit, no one in Louisiana has ever questioned either the interest of the public in the safe and proper management of building and loan associations, or the right of the Legislature, in its discretion, to regulate, or to suppress altogether, the business of building and loan associations.

The system of withdrawal is no longer a race of diligence between stockholders where the rich and, as a rule, better informed, though less needy, stockholder may rush in and get paid to the prejudice of his poorer, more needy and less informed brother.

Wherefore, the premises considered, respondent prays that the demand of the plaintiff may be denied, and that plaintiff's suit may be dismissed, with costs.

And for all general and equitable relief.

(Signed) Weiss, Yarrut & Stich, Attorneys for Defendant. (Signed) Delvaille H. Theard, Legier, McEnerny & Waguespack, Carroll, McCall & Plough, A. D. Danziger and P. H. Stern, J. G. Dempsey, D. J. Murphy, M. Mithoff, J. Zach Spearing, Scott E. Beer, of Counsel.

[fol. 17] *Duly sworn to by Allen H. Generes. Jurat omitted in printing.*

[fols. 18-24] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

No. 199,578

[Title omitted]

DEFENDANT'S EXCEPTIONS—Filed May 16, 1933

Into Court comes the defendant, Conservative Homestead Association, which excepts to the petition and demand of the plaintiff herein, on the ground that the same discloses no right of action and no cause of action.

Wherefore, exceptor prays that the said exceptions may be maintained, and that the present suit may be dismissed at the cost of the plaintiff.

And exceptor prays for all general and equitable relief, etc.

(Signed) Delvaille H. Theard, (Signed) Weiss, Yarrut & Stich, Attorneys.

Certificate

Delvaille H. Theard, of counsel herein, does hereby certify that, in his opinion, the foregoing exceptions are well founded in law; that said exceptions have been filed in good faith, and not for delay.

New Orleans, May 16, 1933.

(Signed) Delvaille H. Theard.

[fol. 25] In Civil District Court of Orleans Parish, Division "D"

No. 199,497

Treigle Sash Factory, Inc.

vs.

Conservative Homestead Assn.

Reasons for Judgment—Filed May 16, 1934.

In these cases, there were originally seven suits filed, one of which, the suit of Mrs. Poulit v. Fidelity Homestead Association, No. 199,522, has been discontinued. The balance of the cases are exactly alike and involve the same issues, with the exception of Sokolsky v. Equitable Homestead, No. 199,559, which differs slightly in the relief sought, but which is nevertheless identical in the constitutional issues involved.

All of the plaintiffs in writ of injunction attack Sections 53 to 57, inclusive, of Act 140 of 1932 on the ground that they deny them the equal protection of the laws and impair the obligations of contracts, in violation of the provisions of the Constitution of the United States and of this State.

They claim contractual rights by virtue of their subscription to stock in the respective homesteads and by virtue

of the rights of withdrawal granted them at the time of their subscriptions to paid-up stock, under the provisions of Section 7 of Act 280 of 1916, and claim that these contractual rights were impaired by the aforesaid sections of the Act 140 of 1932.

The defendants, on the other hand, contend that no contractual rights were vested by virtue of Section 7 of Act 280 of 1916, but that whatever rights were granted were purely statutory and were subject to the reserved right of the legislature to change these rights as it saw fit under an exercise of the police power of the State.

It is, therefore, necessary to inquire first whether any rights accrued to the plaintiffs by virtue of their paid-up subscriptions to the stock of the respective homestead associations under Section 7 of Act 280 of 1916.

In a consideration thereof, it must be borne in mind that building and loan associations have been the subject of legislation over a long period of time, but it was not until 1902 that the legislature saw fit to provide the measure of allotment or the restrictions upon allotment with regard to paid-up shares. Thus Section 7 of Act 120 of 1902 provided:

"That a member may withdraw his unpledged shares at any time by giving written notice of such intention as provided for in the act of incorporation or by-laws and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges and losses accrued, or contingent, to the time of the notice of withdrawal, as the board of directors may determine, with no interest or profits from the time of such notice; but at no [fol. 26] time shall more than one-half of the monthly receipts be applicable to the demands of the withdrawing members without the consent of the directors."

It will be observed, therefore, that this section fixed a limitation upon the amount applicable to the demands of withdrawing members, but imposed no obligation whatever to allot any particular amount, leaving the question of amount of allotment entirely in the discretion of the board of directors.

As financial conditions improved and the use of homesteads by subscribing members for the purpose of purchas-

ing and building homes became more pronounced, it was thought advisable by the legislature to amend Section 7 of the Act of 1902 so as to hold out additional inducements to those subscribing to paid-up stock, and, in accordance therewith, Section 7 was amended so as to read as follows, to-wit:

"That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention, and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw are filed. Whenever the proportion of receipts ordinarily made applicable to the demand of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

It is obvious, therefore, that the Act of 1916 made a substantial change in the rights of paid-up stockholders desiring to withdraw, because, whereas, under the provisions of the Act of 1902, the matter was left to the discretion of the Board of Directors, with a limitation upon the amount which they may apply to such demands, the Act of 1916 continued the discretion in the board of directors, but also provided that, if the amount applied by them to the withdrawing members was not sufficient to pay them in whole within sixty days, thereafter one-half of its receipts should be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

It is this right to a segregation of one-half of the receipts which the plaintiffs in these cases claim are contractual rights which the superseding Act of 1932 impairs.

There is no force whatever in the contention of defendants that there has been no change between the provisions of the Act of 1902 and the Act of 1916, because, as hereinabove pointed out, the right to the segregation of the funds is not only a substantial change, but is one which held out an early liquidation of the claims of the withdrawing stockholders by the aforesaid segregation of a proportion of the receipts, and it is this inducement or guarantee which no [fol. 27] doubt led most of the subscribers to make the investments in the respective homesteads, which during the boom period were so prolific.

The defendants, however, claim that this right accruing under the Act of 1916 was not a contractual right, but that it was what they term a statutory right, resulting from the provisions of the Act of 1916, which they contend contained a reserved right to amend by the legislature, and that the provisions of the Act of 1916 were merely a legislative grant, subject to change at the whim of the legislature.

In support of these respective contentions, I have been furnished with very able argument on behalf of extremely competent attorneys for both the plaintiffs and defendants, together with elaborate briefs on both sides. These briefs have been supplemented by counsel in furnishing me with the decisions in the cases of Home Building & Loan Assn. v. Blasdell, decided January 8, 1934, Advance Sheets Supreme Court Reporter, Vol. 54, page 5 (commonly referred to as the "Moratorium Case"); Leo Nebbia, appellant, v. People of the State of New York, decided March 5, 1934, by the Supreme Court of the United States (commonly referred to as the "Milk Case"); In the Matter of the Application of the People of the State of New York, by George S. Van Schaick, Superintendent of Insurance of the State of New York, for an Order to Take Possession of the Property of and Rehabilitate the Title & Mortgage Guaranty Company of Buffalo, decided March 21, 1934, by the Court of Appeal for the State of New York; and also a decision of the Supreme Court of this State in the matter of Harding v. Blanchard, No. 32,763 of the docket of said Court, decided March 26, 1934.

The only bearing that the latter case has on the instant case is that it was therein decided that Section 57 of Act 140 of 1932, which permitted the defendant corporations to accept their own stock, as part of the purchase price in disposing of repossessed property, was not a violation of any

contractual or statutory rights accruing to paid-up stockholders, but was merely administrative in its character and did not trench upon the reserve fixed by the Act of 1916. That, of course, disposes of any contention in these cases involving Section 57. The remaining cases above cited will be discussed later.

The contention of defendants that the paid-up stockholders acquired no rights under the Act of 1916 is, in my judgment, absolutely without merit.

There are two schools of thought in the application of the contract clauses in the federal and state constitutions, one of which may be designated as the "liberal" school and the other as the "conservative" school.

Presently the United States Supreme Court is divided five to four, with the liberal school prevailing. There is, however, no difference in opinion whatever between the respective schools in their firm conviction that the contract clauses of the federal and state constitutions form a fundamental part of the form of government under which both the federal and state governments function.

There is a firm conviction on the part of each school that any surrender of the rights accruing under the provisions of these guarantees would amount to a change in the form of government, and they, therefore, are in common agreement in the belief that these guarantees are fundamental [fol. 28] and immutable. The difference in opinion between these respective schools is always in the application of these guarantees, and, as said before, not as to their fundamental guarantees.

That is the reason why, in every one of the cases decided by the Supreme Court of the United States, and very largely by the decisions rendered by the respective state courts, the language used by the prevailing opinions is extremely guarded in its expression. An attempt is always made, as far as humanly possible, to confine the language of the case in its application to that particular case, and there is always a discussion of the previous cases, either as direct authority for the views held in the particular case at issue, or in order to differentiate the case at issue from previous decisions.

In short, what we term the "liberal" school of thought is merely more liberal in allowing a broader legislative authority to meet the changed conditions in political, social

and economic conditions so as to promote the morals, health or general welfare of the people; whereas, the "conservative" school are a little more timorous in their allowances. However, the liberal school is always so guarded in its language, wherein it affirms what some believe to be legislative encroachments, that the difference between the two schools of thought is tenuous indeed.

That contractual rights flow to the subscribers under Section 7 of Act 280 of 1916, in my judgment does not admit of debate, because, where a person deals with a corporation which is subject to legislative control, he deals with it on the basis of the legislation then existing. The legislation is a limitation only on the corporation, and, being a limitation, it carries with it the corollary that the things authorized or not prohibited are allowable, and, therefore, when the legislature fixed the amount which would be available for the liquidation of the rights of paid-up and withdrawing stockholders, this unquestionably constituted a contract between the parties.

This is so well settled that I will not burden the appellate court with a citation of authorities. They will find most of them referred to in the Home Building & Loan Assn. v. Blasdell decision referred to above.

Not only did it carry with it contractual rights to a segregation of the funds provided in the statute, but it carried with it, as a contractual right, all of the remedies which the then existing laws provided.

But, say defendants, if they be contracts, these contractual rights must surrender to the paramount right of and exercise of the police power. It is, of course, a legal truism that all contracts have impliedly written into them the reserved right of sovereignty, that is, the right of the government, state and national, in the exercise of its police power, to ameliorate or mitigate the effect of contracts, or, even in extreme cases, to abrogate them altogether.

It does not follow, however, by the fact that this reserved right is inherent, that the legislature may arbitrarily abrogate or affect these rights under the guise of the police power, unless it is clear that the legislation promotes the general welfare or affects public health or morals; or, according to the latest thought on the subject, to which I [fol. 29] readily subscribe, changed economic conditions warrant the legislation on the theory that an emergency exists in which the public is vitally interested, and that the

legislation can, therefore, be supported on the basis of the emergent condition. But it must be kept in mind also that legislation sustained on this basis can only be sustained as long as the emergency continues.

From a reading of the opinions in the Milk Case and the Moratorium Case and in the Bond Case (decided by the Court of Appeal of New York), all of which are referred to above, it will be readily seen that these enactments were sustained only on the basis of the emergency, the time limit being fixed in the Act; and, in the Moratorium Case, not only on the basis of the time limit being fixed in the Act, because of the provision in the Act that the rental value was secured to the mortgage holder pending the statutory moratorium, so that he could suffer no eventual loss during the time limitation; and, inasmuch as the United States Supreme Court divided five to four, even on this grudging adjudication, one can appreciate within what narrow bounds the decision hinged.

In the Milk Case, the maximum price for milk was fixed in the act, and the time limit for the term of the enactment was therein fixed. This case was also decided within narrow limits and because of the two-fold fact that the use of milk was a public necessity, vital to the health of the community, and because of the admittedly disastrous economic conditions presently prevailing in the milk industry.

How far, then, do the provisions of Sections 53 to 56, inclusive, trench upon the contractual rights accruing to the plaintiffs, and how far are they permissive under the restrictions of the federal and state constitutions?

The Court can take judicial knowledge of the fact that we have a world depression such as was never known in historic times; that changed conditions in the political, sociological and economic life of the states and nation are so pronounced that they affect every business and industry and even the personal welfare of the individual citizen. No two economists agree upon the causes for this condition, but the facts are so obvious that they are admitted by economists and laymen alike.

While homesteads are organized for the purpose of promoting thrift and industry, and in large cities like New Orleans they deal with a fairly large aggregate of people, they do not in any sense affect the public at large, such as do banks, insurance companies and public service corpora-

tions. They are not, in the true sense, corporations engaged in a business charged with a public interest such as the foregoing are, nor are they quasi-public corporations. They deal entirely with their subscribers and borrowers and with banks and financial institutions which furnish them banking facilities; and, while they are subject to the regulations of the States as to the manner and form in which they do business, persons doing business with them are justified in accepting the law at the time the contract is made as being the law of the contract, without being obliged to consider that their contract rights may be impaired or impinged upon, unless it can be shown that the public at large has acquired an interest, the protection of which renders necessary legislative enactments curtailing their contract rights.

The national bank holidays, the state bank holidays, and the changed conditions in the banking fomulas, wherein [fol. 30] homesteads can no longer borrow from banks with anything like the same degree of freedom that they could before the depression, make it extremely difficult, if not impossible for homesteads to meet the demand of withdrawing stockholders.

This, coupled with the fact that a panic was in existence, and that, following the normal trend of a frightened people, paid-up stockholders in the respective homesteads engaged in a race to become first applicants in order to withdraw their funds therefrom, thus threatening to stagnate the operation of the homestead, legislation was probably advisable.

This being admitted, the defendants say that, inasmuch as legislation was advisable, at least in so far as economic conditions are concerned, therefore, the matter is purely legislative, and, once the legislature has acted, the courts are powerless to change.

This is not an accurate statement of the law. They quote in their brief an expression from Chief Justice O'Niell, which is both pithy and lucid and which does correctly state the law; but what counsel overlooks in the interpretation of the remarks of Mr. Chief Justice O'Niell is the fact that the Chief Justice refers to the reasonableness of the enactment. Of course, where the legislative enactment has reasonable application to the purpose sought to be remedied, and where it could reasonably be assumed that it had it in

mind, it will be judicially assumed that it had it in mind, and the courts would then not interfere with the legislative enactment, whether in practice it actually worked out, as intended, this being a matter which should be corrected by the people and not by the courts.

However, the courts have always held that they reserve to themselves the right to determine whether, in any given case the legislation could be reasonably construed to effectuate the purpose intended, and, if so, it was legislative. True, they have been very liberal in maintaining legislative enactments trenching upon contractual rights, in furtherance of the police power, where they have had any reasonable application to a cure of the evils sought to be eradicated; but I have yet to find a decision of the United States Supreme Court wherein they have permitted the legislature to "run loose", so to speak.

Let us see now just how far these respective sections trench upon the contractual rights of the plaintiffs. Temporarily we will skip Section 53.

Section 54 creates a stagger system of withdrawal, and permits the unregulated payment of applications up to $100.00. Inasmuch as this statute can be maintained, in my judgment, only on the theory of an emergent condition, I consider the purpose of Section 54 to be well within the power of the legislature as an enactment in the interest of the public welfare, as the extremely small amount involved can have no serious effect upon the ultimate payment of the withdrawing stockholders.

Section 54 provides an entirely new method of withdrawal. Instead of segregating a fixed proportion of the net receipts provided for in the Act of 1916, and also paying the withdrawing stockholders in the order of their application for withdrawal, it provides that they shall be paid only twenty-five per centum up to $500.00 of the amount of their withdrawal claims, but then subordinates them for the remaining seventy-five per centum to all other applicants for withdrawal, placing them down to the bottom of the list, and then continuing to pay them twenty-five [fol. 31] per centum each time they come to the top of the list.

Thus it appears that the right of the stockholder to withdraw in the order of precedence as filed is completely taken away from him, and those who were subordinate to him

under the Act of 1916 are paid out twenty-five per centum while his seventy-five per centum is still outstanding, and the funds of the corporation depleted to that extent.

There is a further grant of power to the board of directors, in their discretion, to pay the sum of $100.00 per month to any applicant on the withdrawal list, whether he be the first in order or the last, in direct violation of the order of precedence as stipulated in the Act of 1916, and, through the exercise of this discretion, the board of directors would be authorized to pay a subordinate stockholder in full to the detriment of those standing above him in the order of application, a direct violation of the contract rights under the Act of 1916.

Section 55 again changes the status of a withdrawing member. In so far as his rights to profits after the notice of withdrawal is concerned, they remain the same as they did in the original act. There has been, therefore, no change regarding same, but his rights to withdraw are limited to and prescribed by the provisions of Section 53.

By the last paragraph of Section 55, the rights of the withdrawing stockholder is again restricted, by vesting in the board of directors a discretion to prescribe and grant the order of payment in the form of an allowance on unpaid withdrawals, but limits the power of the board of directors to a maximum of sixty per cent of the rate of dividend currently and actually paid in cash on the shares of continuing members.

Therefore, not only is the withdrawing stockholder deprived of his right, under the provisions of the Act of 1916, to have a reserve of one-half of the net income of the homestead allocated to the liquidation of his stock, but he is further subordinated in the order of payment to the current stockholders, who shall receive dividends in preference to him, and he can only receive (and that within the discretion of the board) not more than sixty per cent of the amount paid to the current stockholders in dividends, a clear deprivation of his contractual rights.

While the right to declare dividends to current stockholders has always been a part of the law, nevertheless this right, under the Act of 1916, could only come into being after one-half of the net proceeds had been set aside.

Section 56 specifically provides that "the attribution to be made from receipts or other assets whatsoever for the

payment of withdrawals shall at all times be under the sole control and administration of the board of directors, which, in its discretion, shall determine from time to time the amount or amounts to be used for the payment of such withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purpose are now superseded by the present statute, with the same effect as if the same had been conventionally waived by all present shareholders and as part of of the subscriptions of all future subscribers to or holders of shares."

Whatever force and effect those provisions may have as to future stockholders, one can certainly not, by a legisla- [fol. 32] tive fiat, convert a contract right into a conventional waiver.

Defendants contend that the provisions of said section reading—

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board, may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

do not alter the position of the plaintiffs, but rather add to their advantages, because they limit the amount, whenever there is a withdrawal list, to not more than twenty-five per cent of the gross receipts, whereas the right to make loans to new or continuing members, under the law as it stood before the Act of 1932, permitted the use of any part of the gross receipts for that purpose. This is not correct. Under the Act of 1916, the homestead could not lend any part of its gross receipts to new or continuing

members, except after provision was made for the setting aside of one-half of the net receipts; the net receipts being the difference between the gross receipts and the current expenses, which, of course, did not include new loans.

This latter provision, if considered by itself, however, may be maintained as an emergency measure and during the continuance of the emergency, on the theory that it was limited in time, was prescribed for the benefit of the withdrawing stockholders as well as the continuing stockholders, and preserved and continued the assets for the whole. However, it must be read in conjunction with its other provisions and with the provisions of the other sections in question.

Section 53 is a general statement of what was intended by the subsequent sections in question, with the exception that it also provides that the withdrawing member shall bear his proportion of losses and charges, not to the time of his withdrawal, but to the time of final payment, which, if this Act is upheld, may be to the final liquidation of the corporation. In my humble judgment, there is nothing whatever in the provisions of these various sections that could reasonably tend to serve the general welfare either in its health, morals or economic conditions.

The effect of these provisions are solely to eliminate the contract rights of the withdrawing members and inure to the benefit of the continuing members, who may receive dividends which eventually will more than equal the entire [fol. 33] value of their shares, in which event they would still be the owners of their shares and the withdrawing stockholder would have nothing whatever, except what the pleasure of the board of directors may see fit to grant him and not in excess of sixty per cent of the dividends which the continuing stockholders receive.

If these provisions are defensible under our constitutional guarantees, one might as well write out of the Constitution these fundamental guarantees of government, and leave to the whims of the respective legislatures the destinies of all contractual relations.

For the foregoing reasons, the injunctions prayed for will be granted, upon each petitioner furnishing bond in a sum to be fixed in each judgment.

New Orleans, May 16, 1934.

(Signed) Walter L. Gleason, Judge.

[fols. 34–38] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

Division "D"—Docket 5

No. 199,578

JOSEPH MITCHELL

versus

CONSERVATIVE HOMESTEAD ASSOCIATION

JUDGMENT

This matter having been submitted to the Court on the merits, the Court considering the law and the evidence to be in favor of the plaintiff and against defendant, for the reasons dictated, signed and filed herein:

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, Joseph Mitchell, and against defendant, Conservative Homestead Association, decreeing that Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they affect the notice of plaintiff as a withdrawing shareholder, under the provisions of Act 280 of 1916, are unconstitutional, null and void.

It is further ordered, adjudged and decreed that the right of petitioner to enforce the provisions of Section 7 of Act 280 of 1916 are reserved and continued in full force and effect, and the said defendant is restrained and enjoined from in any manner carrying into effect the provisions of Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they may affect the right of the said plaintiff to be paid in the manner and form set out in Section 7 of Act 280 of 1916, and that this injunction issue upon plaintiff furnishing bond in the sum of $1,000.00

Judgment rendered and read in open Court, May 16th, 1934.

Judgment read and signed in open Court, May 25th, 1934.

(Signed) Walter L. Gleason, Judge.

[fol. 39] IN SUPREME COURT OF LOUISIANA

OPINION AND JUDGMENT

His Honor, the Chief Justice, pronounced the opinion and judgment of the Court in the following case:

No. 33075

JOSEPH MITCHELL

vs.

CONSERVATIVE HOMESTEAD ASSOCIATION

Appeal from the Civil District Court, Parish of Orleans, Walter L. Gleason, Judge

This is one of the cases mentioned in the opinion rendered today in the case of Camille V. Treigle v. Acme Homestead Association, No. 33,065. For the reasons given in that case, the judgment appealed from is annulled and reversed, and the demand of the plaintiff is rejected and his suit dismissed at his cost.

Odom, J., dissents.

[fol. 40] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

PETITION FOR REHEARING

To the Honorable the Supreme Court of the State of Louisiana:

The petition of Joseph Mitchell, plaintiff and appellee, respectfully represents:

I

That the opinion and decree rendered by this Court in this cause on the fourth day of March, 1935, is erroneous and contrary to the law and the evidence, and is prejudicial to petitioner, and that a rehearing should be granted in this matter, for the following reasons, to-wit:

1. That this Court is in error in holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be constitutional.

2. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 10 of Article I of the Constitution of the United States.

3. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

4. That this Court erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

[fol. 41] 5. That this Court erred in holding that there is nothing "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act 140 of 1932, or in any one of these sections".

6. That this Court erred in not holding that a shareholder in a building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act 140 of 1932, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, which vested right of property is protected by the Fourteenth Amendment to the Constitution of the United States.

7. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932, and each of said sections, to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and, therefore,, unconstitutional.

8. That this Court erred in not holding Sections 53 and 56 to be unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion

to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

9. That this Court erred in holding that the plaintiff in this cause has no cause or right of action.

10. That this Court erred in reversing and annulling the judgment of the District Court appealed from, and in rejecting plaintiff's demand and dismissing his suit.

11. That this Court erred in not affirming the judgment of the District Court appealed from.

[fol. 42] II

Petitioner shows further that he will file in connection with this petition brief in support thereof; and that for the reasons herein above set forth and to be amplified in the brief, a rehearing should be granted and that finally the Court affirm the judgment appealed from.

The premises considered, petitioner prays that, after due consideration, a rehearing be granted in this case, and that finally the Court affirm the judgment of the District Court appealed from, decreeing Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana to be unconstitutional as violative of Section 10 of Article I and Section 1 of Amendment XIV of the Constitution of the United States.

(Signed) Arthur B. Leopold, Attorney for Petitioner.

[fols. 43 & 44] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

ORDER DENYING REHEARING—April 1, 1935

BY THE COURT:

It is ordered that the rehearing applied for in this case be refused.

[fol. 45] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES —Filed June 21, 1935

To the Chief Justice of the Supreme Court of the State of Louisiana:

The petition of Joseph Mitchell respectfully shows:

1. Petitioner is the plaintiff in the above numbered and entitled cause.

2. On October 25, 1932, petitioner filed a suit in the Civil District Court for the Parish (County) of Orleans, State of Louisiana, in which petitioner alleged that as an owner of $10,000.00 of the full paid capital stock of Conservative Homestead Association, a building and loan corporation, organized under the laws of the State of Louisiana, he had, in accordance with its charter and by-laws and the law of the State of Louisiana then in force, notified said Homestead Association of his intention to withdraw his said stock investment, which notification of intention to withdraw fixed, determined and vested a valuable property right in petitioner, and made executory a contractual obligation between said Conservative Homestead Association and petitioner, obliging said Association to repay to petitioner his said stock investment as provided in said charter and by-laws and the laws of Louisiana then in force.

In said suit petitioner alleged that more than sixty days subsequent to his said notice of withdrawal Act No. 140 of the Legislative Acts of Louisiana for the year 1932 was adopted and became law, approved July 12, 1932, and known as "Louisiana Homestead and Building and Loan Statute"; and that Sections 53, 54, 55 and 56 of said Act 140 of 1932 impair the obligations of petitioner's contract with said Homestead Association and deprive petitioner of his [fol. 46] said vested property rights without due process, and are, therefore, repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States.

Petitioner in said suit prayed for judgment declaring said Sections 53, 54, 55 and 56 of said Act 140 of 1932 of Louisiana to be unconstitutional, as repugnant to said provisions of the Constitution of the United States, and that the Conservative Homestead Association be enjoined from proceeding under the same.

In said suit there was judgment of the District Court in petitioner's favor, decreeing said sections of said Act to be unconstitutional and enjoining the Homestead as prayed.

3. An appeal from said judgment was taken by said Conservative Homestead Association to the Supreme Court of the State of Louisiana; and on March 4, 1935, the Supreme Court of the State of Louisiana reversed said judgment and decreed said Sections 53, 54, 55 and 56 of said Act 140 of 1932 constitutional and valid and not repugnant to the Constitution of the United States, and dismissed petitioner's suit.

Thereafter petitioner applied for a rehearing which was denied by said Supreme Court of Louisiana on April 1, 1935.

4. Said Supreme Court of the State of Louisiana is the highest court of the State of Louisiana in which a decision in the suit could be had.

5. In said cause there is drawn in question the validity of a statute of the State of Louisiana on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity; in that in said suit petitioner alleges that Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of the Legislative Acts of the State of Louisiana known as "Louisiana Homestead and Building and Loan Statute" are repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States, and prays that said sections of said act be decreed unconstitutional, and that the defendant Building and Loan Association be enjoined from proceeding thereunder, in that said sections of said act impair the obligations of the contract between petitioner and the defendant Conservative Homestead Association, and deprive petitioner of his vested property rights without due process of law.

Wherefore, petitioner prays for the allowance of an appeal herein from said Supreme Court of the State of Louisi-

ana, to the Supreme Court of the United States, in order that the said decision of the Supreme Court of the State [fol. 47] of Louisiana may be examined and reviewed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Louisiana, may be sent to the Supreme Court of the United States, as provided by law.

Petitioner prays an order touching the security to be required of him, and the approval of such bond as is required in this case.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

New Orleans, Louisiana, June 21, 1935.

(Sgd.) Arthur B. Leopold, (Sgd.) Alex. W. Swords, (Sgd.) A. Giffen Levy, Attorneys for Joseph Mitchell, Petitioner and Proposed Appellant.

[fol. 48] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

ASSIGNMENT OF ERRORS ACCOMPANYING PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES—Filed June 21, 1935

Joseph Mitchell, plaintiff in the above cause, praying for an appeal herein to the Supreme Court of the United States, assigns the following errors in the record and proceedings in said cause:

1. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the legislative Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Article I, Section 10, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

2. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the Legislative Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Amendment XIV, Section 1, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

3. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of said Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 10 of Article I of the Constitution of the United States.

4. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the [fol. 49] United States.

5. The Supreme Court of Louisiana erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

6. The Supreme Court of Louisiana erred in holding that there is nothing "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, or in any one of these sections".

7. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act No. 140 of 1932 of Louisiana, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawal of 50% of net receipts, and of which vested right of property he is deprived by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than sixty days prior to the effective date of Act No. 140 of 1932 of Louisiana, has a contractual obligation obliging the Building and Loan Association to pay him in full upon his reaching the top of the withdrawal list, and obliging it to allocate 50% of its net receipts to care for withdrawals, which contract obligations are impaired by Sections 53, 54, 55 and 56 of Act No 140 of 1932 of Louisiana, in violation of Article I, Section 10, of the Constitution of the United States.

9. The Supreme Court of Louisiana erred in not holding Sections 53 and 56 of Act No. 140 of 1932 of Louisiana and each of said sections to be repugnant to the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

10. The Supreme Court of Louisiana erred in not hold-
[fol. 50] ing Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and therefore unconstitutional.

For which errors, Joseph Mitchell prays that said judgment herein of the Supreme Court of the State of Louisiana dated March 4, 1935, rehearing denied April 1, 1935, in the above entitled cause, be reversed, and judgment rendered in favor of the said Joseph Mitchell.

Dated June 21, 1935.

(Sgd.) Arthur B. Leopold, (Sgd.) Alex W. Swords, (Sgd.) A. Giffen Levy, Counsel for Joseph Mitchell.

[fol. 51] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF UNITED STATES

The petition of Joseph Mitchell for an appeal in the above suit to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, and the assignment of errors and statement of basis of jurisdiction filed therewith, and the record of said suit having been considered, it is

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, as prayed in said petition, and that the clerk of the Supreme Court of the State of Louisiana shall prepare and certify a transcript of the record and proceedings in the above suit and transmit the the same to the Supreme Court of the United States within forty (40) days from the date hereof.

It is further ordered that said Joseph Mitchell shall give good and sufficient security, in the sum of One Thousand ($1,000.00) Dollars, that said appellant shall prosecute said appeal to effect, and if said appellant fail to make his plea good he shall answer all costs.

The said appellant now presenting a bond in the sum of One Thousand ($1,000.00) Dollars, with Joseph Bohrer, of New Orleans, Louisiana, as surety, it is

Ordered that the same be, and is hereby, approved.

Dated June 21st, 1935.

(Sgd.) Charles A. O'Niell, Chief Justice of the Supreme Court of Louisiana. (Seal.)

[fols. 52-61] Bond on appeal for $1,000.00, approved June 21, 1935, omitted in printing.

[fol. 62] Citation in usual form, showing service on D. H. Theard, omitted in printing.

[fol. 63] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

AGREEMENT OF COUNSEL AS TO TRANSCRIPT OF RECORD—Filed June 22, 1935

It is agreed between counsel for appellant and counsel for appellee in the above matter, in which an appeal has been ordered from the Supreme Court of Louisiana to the Supreme Court of the United States, that the Clerk of the Supreme Court of Louisiana shall include the entire record in the transcript; and that in making up the transcript the said Clerk may use one of the duplicate transcripts of the cause now in his office.

New Orleans, Louisiana, June 21, 1935.

(Sgd.) Arthur B. Leopold, (Sgd.) Alex W. Swords,
(Sgd.) A. Giffen Levy, Counsel for Appellant.
(Sgd.) Delvaille H. Theard, Counsel for Appellee.

[fol. 64] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 65] SUPREME COURT OF THE UNITED STATES

STATEMENT BY APPELLANT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 31, 1935

Comes now Joseph Mitchell, the appellant in the above entitled cause, and states that he adopts his assignment of error as his statement of the points to be relied upon.

Said appellant further states that the following parts of the record as filed in this Court are deemed necessary for the consideration of the case, and are designated as the parts of the record to be printed.

Title of Paper	Record Pages
1. Plaintiff's petition	1 to 10
2. Defendant's answer and exception	11 to 18
3. Reasons of District Judge	25 to 33
4. District Court's decree	34
5. Opinion and decree of Supreme Court of Louisiana	39
6. Application for rehearing	40 to 42
7. Denial of application for rehearing April 1, 1935	43
8. Petition for appeal to this Court	45 to 47
9. Assignment of errors	48 to 50
10. Statement of Basis of Jurisdiction	54 to 60
11. Order allowing appeal	51
12. Bond for appeal	52 to 53
13. Citation of appeal and return	62
14. Agreement on Transcript	63
15. Proof of service required by Rule 12, paragraph 2	61
16. Certificate of Clerk Supreme Court of Louisiana	64
17. This Statement of Points to be relied on and parts of record necessary for consideration and to be printed.	

Arthur B. Leopold, Alex. W. Swords, A. Giffen Levy, Counsel for Joseph Mitchell, Appellant.

Service acknowledged this July 29, 1935.

Delvaille H. Theard, Attorney for Defendant Thrift Homestead Association. Address: 406 Canal Bank Bldg., New Orleans, Louisiana.

[fol. 66] [File endorsement omitted.]

Endorsed on cover: File No. 39,870. Louisiana, Supreme Court. Term No. 316. Joseph Mitchell, Appellant, vs. Conservative Homestead Association. Filed July 31, 1935. Term No. 316, O. T. 1935.